

General Information Letter: No claim for refund or credit of amounts withheld or paid as estimated taxes during a year may be filed if no return for the year is filed within 3 years after the due date for filing.

October 11, 2006

Dear:

This is in response to your letter dated August 12, 2006. The nature of your letter and the information provided require that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be accessed from the Department's web site at [www.Iltax.com](http://www.Iltax.com).

Your letter states as follows:

This letter is in response to your attached notice (BTR-76) dated July 21, 2006. Please review the following facts:

- ? On July 18, 2002, filed IL-1120 for December 2001
- ? On January 20, 2006, received a notice of deficiency (LTR-393) from Illinois Department of Revenue, mentioning NOL will not be counted due to late filing (see attached).
- ? On February 23, 2006, the Protest for Income Tax was filed.
- ? On March 29, 2006, spoke with Ms. Helen at IDOR Business Income Tax Department regarding withdrawal of the protest, waiver of penalty and interest, NOL deduction, and refund of \$2,000.
- ? On July 21, 2006, received BTR-76 Notification that stated the \$2,000 tax deposits cannot be claimed because the return was filed more than three years after the due date.

The taxpayer mailed the tax return on time (July 18, 2002). We respectfully ask for your kindest reconsideration of our request that the tax deposit of \$2,000 be refunded to the taxpayer or credited to the taxpayer's account. Thank you.

## **RULING**

Based on the documentation accompanying your letter, it appears that your client filed a calendar year 2001 tax return (Form IL-1120) showing an Illinois net operating loss of (\$51,724) against estimated tax payments of \$2,000. It also appears that the loss was carried over to the taxpayer's 2002 taxable year and claimed as an Illinois net operating loss deduction of \$51,724. The Department's notice BTR-76 (copy attached to your letter) indicates that your client's 2001 tax return was not filed until after the extended due date. The Department issued a Notice of Deficiency for your client's 2002 taxable year (copy attached to your letter) disallowing the entire net operating loss deduction of \$51,724.

Section 207(a)(2) of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/207) provides that if a taxpayer incurs an Illinois net operating loss (INOL) for taxable years ending on or after December 31, 1999 and prior to December 31, 2003, then such loss shall be allowed as a carryback to each of the 2 taxable years preceding the loss year and as a carryover to each of the 20 taxable years following the

loss year. Section 207(a-5)(A) provides that for INOLs incurred in tax years ending prior to December 31, 2003 the taxpayer may elect to forego the entire carryback period. The section specifies that such election must be made by the due date (including extensions) for filing the taxpayer's return for the loss year. IITA section 207(a-5)(B) states regarding the manner in which INOLs are carried that the entire amount of such loss shall be carried to the earliest taxable year to which such loss may be carried. The amount of loss which is carried to each of the other taxable years is the excess of the INOL not absorbed in prior taxable years.

Section 505(a)(1) of the IITA requires that corporate income tax returns must be filed on or before the 15<sup>th</sup> day of the third month following the close of the taxable year. However, Department regulations § 100.5020 (86 Ill. Admin. Code § 100.5020) grants corporations an automatic 7-month extension of the time period provided in section 505(a)(1). Thus, for a corporation whose taxable year is the calendar year the due date for filing the Illinois income tax return is October 15<sup>th</sup> of the succeeding year.

Section 911 of the IITA relates to limitations on claims for refund. Subsection (f) of that section states that no claim for refund based on the taxpayer's taking a credit for estimated tax payments may be filed more than 3 years after the due date provided in IITA section 505 of the return for the taxable year for which the payments were made. Subsection (h) of section 911 limits claims for refund based on INOL deductions. The subsection provides that no claim for refund based on a net loss carryover may be filed after August 22, 2003 unless the loss was reported within three years after the due date of the return for the loss year.

In this case, because your client's 2001 Illinois income tax return was not filed until after the extended due date, under section 911(f) no claim for refund based on estimated payments of tax for that year may be allowed. Your client may not file a claim for refund of the \$2,000 in estimated tax payments made for the 2001 taxable year. In addition, as indicated in the Department's notice, your client's election to relinquish the carryback period for the 2001 INOL is not valid. As a result, the loss must be carried as provided in IITA section 207(a)(2) and (a-5)(B). Regarding the 2002 taxable year, assuming that all or a portion of the 2001 INOL is carried to such year, IITA section 911(h) does not preclude the INOL deduction for such loss, but would preclude any claim for refund made after August 22, 2003 based on the carryover of the loss because the 2001 return was not filed until after the extended due date. However, it does not appear that there is an overpayment for the 2002 taxable year even assuming that the entire INOL is carried to that year.

As stated above, this is a GIL. A GIL does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you have questions regarding this GIL you may contact Legal Services at (217) 782-7055. If you have further questions related to Illinois income tax laws, visit our website at [www.revenue.state.il.us](http://www.revenue.state.il.us) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Brian L. Stocker  
Staff Attorney (Income Tax)